

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 92 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.
2. To be referred to the Reporter or not?-No.
3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

COMMISSIONER OF INCOME-TAX

Versus

CELLULOSE PRODUCT OF INDIA LTD

Appearance:

Mr.M.J. Thakore, Advocate, instructed by
MR Manish R. BHATT for the applicant.
Mr.J.P. Shah, Advocate, for the respondent.

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE R.BALIA.

Date of decision: 03/02/97

ORAL JUDGEMENT : (Per R.K. Abichandani, J.)

Following two questions have been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Ahmedabad :-

- i. "Whether, on the facts and in the circumstances of the case, the Tribunal

was right in law in holding that the assessee was entitled to the allowance of the claim for the amount incurred on Accident Insurance policy?"

- ii. "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that for the purpose of making additions under section 40A(5) of the I.T. Act, 1961, the perquisites are to be valued as per Rule 3 and not the actual expenditure involved?"

As regards question No.1, from the Tribunal's order, it is not apparent whether the Accident Insurance Policy taken by the assessee was for its business purposes or for the reimbursement of personal benefit of the employee. In the absence of any finding that the Accident Insurance Policy was taken by the Company for the benefit of the employee and not to safeguard company's own interest against possible disablement of the employee, it is not possible to come to any conclusive finding whether the Accident Insurance premium for the policy in question amounted to perquisite. This would depend upon the terms and conditions on which the insurance policy has been taken out by the employer. In view of the fact that sufficient material on the aspect indicated above is not on record, we do not answer the question No.1.

As regards the question No.2, from the order of the Tribunal, it is clear that no such contention that for the purpose of making additions under Section 40A(5) of the Act, the perquisites of personal use of motor cars are to be valued as per Rule 3 and not the actual expenditure involved was raised before the Tribunal and, therefore, the question does not arise for our opinion. The Reference stands disposed of accordingly with no order as to costs.

(apj)